

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

RICHARD ROBINSON

PLAINTIFF

v.

Civil No.6:15-CV-06036-PKH-BAB

WENDY KELLY, ET. AL.

DEFENDANTS

**AMENDED REPORT AND RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

Plaintiff, Richard Robinson, submitted this *pro se* action for filing on April 16, 2015. ECF No. 1. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2011), the Honorable P. K. Holmes, III, United States District Judge, referred this case to the undersigned for the purpose of making a Report and Recommendation. Currently before the Court is Plaintiff's Motion for Reconsideration (ECF No. 15) of this Court's Order denying his Motion for Temporary Restraining Order and Preliminary Injunction. After careful consideration, I enter the following Amended Report and Recommendation.¹

BACKGROUND

Plaintiff is currently incarcerated in the Arkansas Department of Corrections ("ADC") Ouachita River Unit. Plaintiff's Complaint alleges he spit at his dialysis nurse on November 26, 2014. For this infraction he is required to wear a "spit mask" and restraints when he receives dialysis. Plaintiff alleges this is an excessive use of force and has caused him to have less time spent on dialysis. ECF No. 1. His Amended Complaint was filed on October 28, 2015. ECF No. 13. This Complaint alleges, with greater detail, the same points as his original Complaint. He

¹ This Amended Report and Recommendation is being filed in order to correct clerical typographical errors in the Report and Recommendation entered on June 28, 2016 (ECF No.20). Pages 4 through 7 of ECF No. 20 should not have been included in the original Report and Recommendation.

alleges he required emergency treatment and oxygen due to having less dialysis, or missed dialysis, because guards were late getting his spit mask. ECF No. 13, p. 7.

Plaintiff filed his Motion for Temporary Restraining Order and Preliminary Injunction on August 14, 2015. ECF No.10. He requested the Court direct Defendants to “cease applying restraints and a spit-mask every time I am being dialyzed.” The Court entered an Order denying his Motion on February 3, 2016. ECF No. 14. On February 22, 2016 Plaintiff filed the current Motion and titled it “Pro se Motions for Preliminary Injunction”. ECF No. 15. This Motion basically repeats the same allegations from his first Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 10). Therefore, the Court will treat Plaintiff’s Motion (ECF No. 15) as a Motion for Reconsideration of this Court’s ruling denying his first request for injunctive relief.

LEGAL STANDARD AND DISCUSSION

The purpose of a Motion for Reconsideration is limited to correcting “manifest errors of law or fact or to present newly discovered evidence.” *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 441 (8th Cir. 1988) (internal quotations and citations omitted). Plaintiff has failed to show any errors of law or fact or to present any newly discovered evidence in his Motion for Reconsideration. Plaintiff’s disagreement with the Court’s decision does not constitute new facts or warrant reconsideration of the Motion. Consequently, I recommend Plaintiff’s Motion for Reconsideration be denied.

CONCLUSION

For the foregoing reasons, I recommend Defendants’ Motion for Reconsideration (ECF No. 15) be **DENIED**. I also recommend Plaintiff be warned if he repeatedly seeks relief which has already been denied his entire case may be dismissed.

The parties have fourteen days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 25th day of October 2016.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE